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No. 87-118

In the Supreme Court of the United States

October Term, 1987

JANET G. MAYNARD,

Plaintiff and Appellant,

v.

HARRY PRIESTER,

Defendant and Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I

STATEMENT OF THE CASE

Petitioner's California state court action was dismissed because she failed to bring it to trial within the applicable five-year period required by California Code of Civil Procedure ("CCP") § 583.310. Notwithstanding that Petitioner failed to discharge her obligation to bring the case to trial within the five-year period, she now asserts in her Petition that she was denied due process of law by application of the statute to her case and that the statute is itself unconstitutional.

The record upon which Petitioner relies to support her Petition, if it may be described as such, is extremely meager. Although the Petition is silent as to the date on which Petitioner filed her Complaint in the Los

Angeles Superior Court, the decision of the California Court of Appeal (Appendix A, page 2, to the Petition), states that Petitioner's Complaint was filed in the Los Angeles Superior Court on September 10, 1980. The Petition concedes that Petitioner's Complaint was dismissed by the Los Angeles Superior Court on October 21, 1985, which was 5 years and 43 days after it was filed, and beyond the five-year limit prescribed by CCP § 583.310.

In her opposition to Respondent's Motion to Dismiss the Los Angeles Superior Court action, Petitioner did not assert that the statute was unconstitutional or that its application resulted in a denial of due process of law as to her case. Likewise, Petitioner failed to raise her constitutional contentions in her appeal to the California Court of Appeal, as appears from the Opinion of that Court (Appendix A to Petition). Petitioner's subsequent Petition for Review to the California Supreme Court was denied, without hearing, as reflected by Appendix B to her Petition. Therefore, her claimed constitutional rights violation was never considered by any of the courts of California.[1]

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[1]The California Supreme Court's refusal to grant a hearing in a given case means only that the " 'court does not consider that the interests of justice, or the purposes for which the power [to grant a hearing] was given, require its exercise in the particular case.' " *People v. Triggs* (1973) 8 Cal.3d 884, 891; 106 Cal.Rptr. 408, 412.

II

ARGUMENT

A. Introduction.

Petitioner's assertions before this Court are no more than a repetition of the unsuccessful arguments she raised in the California courts in which she asserted that her action should not have been dismissed because of her delays in its prosecution.[2]

In seeking certiorari by this Court, Petitioner asserts that her Fourteenth Amendment rights were infringed upon by application of CCP §§ 583.310 and 583.360 and that the statutes themselves are unconstitutional. The Petition, however, fails to state with any precision or specificity, let alone in general, how or in what manner Petitioner's Fourteenth Amendment rights were infringed upon, or why the statute is unconstitutional. The Petition asserts simply, in broad, truncated, conclusionary statements that because Petitioner lost her case on the merits in the California courts, the statutes involved were in some unexplained manner, unconstitutional or unconstitutionally applied. But the Petition is defective on other grounds as well, in that it fails to comply with the requirements of U.S. Sup.Ct. Rules 17 and 21.1(h). Moreover, and contrary to Petitioner's conclusionary

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[2]Petitioner has here repeated verbatim exact passages from her state court briefs, *e.g.* thus, repeated references throughout the Petition to ". . . this Court's decision . . ."; and "[t]his Court 'held' . . . "; "[t]his Court recognized . . ." (Petition, p. 4), referred to decisions of the California Supreme Court, and not to *this* Court before whom the Petition is pending. Similarly, Footnote 2 to the Petition, stating "hereinafter, the Clerk's Transcript will be referred to as CT," is identical to Footnote 2 to Petitioner's Opening Brief to the California State Court of Appeal. That reference is also misplaced as no transcript accompanies the Petition.

assertions, application of the California statutes to her case did not infringe her constitutional rights, the statutes themselves are not unconstitutional and no federal question is involved. Finally, none of Petitioner's constitutional claims were ever considered by, or passed upon, by any of the state courts of California.[3]

B. Dismissal of Petitioner's Complaint by the State Court of California Did Not Result in Her Being Denied Due Process, Nor Are the Statutes Involved Unconstitutional.

Petitioner's Complaint was dismissed upon Respondent's noticed Motion by the Los Angeles Superior Court pursuant to CCP §§ 583.310 and 583.360, which provide for dismissal of actions not brought to trial within five years after commencement.[4] The trial court's dismissal was affirmed on appeal (Appendix A to Petition).

The pertinent sections of the CCP are part of a long-established and flexible scheme enacted by the State Legislature providing for dismissal of actions for delay in their prosecution. The applicable five-year period can be extended however, under extenuating circumstances. Thus, CCP § 583.340(c) extends the five-year period "where it is impossible, impracticable, or futile to bring the action to trial" within five years; CCP § 583.340(a) extends the five-year period during the time within which

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[3]Petitioner's failure to comply with the requirements of U.S. Sup.Ct. Rule 17 and her failure to articulate any factual or legal basis to support her unconstitutional contentions makes a response difficult, as it is always arduous to prove that which is nonexistent, or the negative where no positive is asserted.

[4]Chapter 1.5 of the California Code of Civil Procedure entitled Dismissal for Delay in Prosecution which includes §§ 583.110 through 583.360, appears in Title 8, Part II, of the California Code of Civil Procedure, and is set forth in full in Appendix A hereto.

"the jurisdiction of the court to try the action was suspended"; and CCP § 583.340(b) extends the five-year period while "prosecution or trial of the action was stayed or enjoined." CCP § 583.240 provides for extensions resulting from the inability to effectuate valid service of process; and CCP § 583.320 extends the time in cases where a new trial is granted.

Thus, the statutory scheme contemplates and accommodates for legally justifiable delays in not bringing an action to trial within the five-year period. However, dismissal will result in those instances in which a plaintiff fails to bring his or her case to trial within the five-year period because of his or her own negligence or indifference, as is the case here. *Crown Coach Corp. v. Superior Court,* (1972) 8 Cal.3d 540, 503 P.2d 1347; *Salas v. Sears Roebuck & Co.*, (1986) 42 Cal.3d 342, 228 Cal.Rptr. 504.

In explaining the underlying rationale for the dismissal statutes, the California Supreme Court stated in *Crown Coach*, at page 546:

> The dismissal statutes, like statutes of limitation, "promote the trial of cases before evidence is lost, destroyed, or the memory of witnesses becomes dimmed. The statutes also protect defendants from being subjected to the annoyance of an unmeritorious action remaining undecided for an indefinite period of time." (Citations.)

And the Court went on to observe that whether an extension of the five-year period would be available under its exceptions, was a question of fact:

> "Whether it is impossible, impracticable or futile to proceed to trial must be determined

> in the light of the circumstances in each case. [Citations.]" (Citations.) *Id.* at 547.

The underlying philosophy of the California statutes governing dismissal of actions for delay in prosecution, is that litigants have the right to have their claims heard and determined in the courts of the State of California, *but they also have the duty* to ensure that their claims are heard and determined within the applicable five-year period, absent extenuating circumstances permitting an extension.

In *Salas v. Sears Roebuck & Co., supra,*[5] the California Supreme Court applied that philosophy in affirming the trial court's dismissal of the Complaint there involved, holding:

> The situation confronting the trial court in the present case is nearly identical to that in *Wilson.* In both instances plaintiffs were guilty of an appalling lack of diligence and offered no justification for the delay. As in *Wilson*, plaintiffs here rely on our general policy in favor of trial on the merits. Once again, however, we conclude that although the interests of justice weigh heavily against disposing of litigation on procedural grounds—a policy we reaffirm—that policy

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[5]Pages 10-13 of the Petition discuss *Campanella v. Takaoka,* (1984) 160 Cal.App.3d 504, 206 Cal.Rptr. 745; *Kotoff v. Efseaff,* (1985) 172 Cal.App.3d 991, 218 Cal.Rptr. 499, to support Petitioner's contention that her Complaint should not have been dismissed by the State Court. That discussion is wholly irrelevant to any of the issues raised by the Petition but, just as significantly, each of those cases was disapproved by the California Supreme Court in *Salas, supra*, at page 346, insofar as they held that there was a mandatory duty to set for trial, as asserted by Petitioner.

> will necessarily prevail only if plaintiff makes some showing of excusable delay. (Citations.)

42 Cal.3d at 347.

The *Salas* Court went on to describe the well-established procedural mechanics available to litigants to avoid dismissal under the five-year statute:

> In many instances—particularly when a motion for preferential trial setting is made several months before the five-year deadline—there will remain ample time for a plaintiff to prepare his case for trial and submit a second motion for trial preference on the basis that the case will otherwise face dismissal. By this means, a plaintiff may avoid the severe consequences of dismissal under either subdivision (a) or (b) of section 583.
>
> Plaintiffs here made no such effort. By their utter lack of diligence they forfeited their right to preferential setting for trial and were properly subject to dismissal. . . . *Id.* at 349.[6]

In her state court case, Petitioner failed to discharge her obligation to bring her case to trial within the applicable five-year period due solely to her own neglect. For her to contend here that she was denied due process because of her own dereliction, is as frivolous as is her wholly unsupported assertion that the California dismissal statutes are themselves unconstitutional.

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[6]Former CCP § 583(b), in effect at the time of *Salas*, was the predecessor to CCP § 583.310 which became effective in 1986. The two sections are essentially identical. Former CCP § 583(a), not involved in the California action, was replaced by CCP § 583.420(a)(1)(B), with slight modification.

C. Because Petitioner Failed to "Draw in Question" the Validity of the Pertinent Statutes Before the Courts of California, Certiorari Should Be Denied.

As observed above, Petitioner failed to "draw in question" the validity of the relevant sections of the CCP either on their face or as applied to her case in any of the prior state court proceedings. Her failure to do so should result in a denial of her Petition here, *Cardinale v. Louisiana,* (1969) 394 U.S. 437, 89 S.Ct. 1161, 22 L.Ed.2d 398.

In *Cardinale*, certiorari was granted to consider petitioner's claims that a Louisiana statute which required that petitioner's confession be admitted into evidence in its entirety, was unconstitutional. At oral argument on the certiorari hearing, it was first disclosed that the sole federal question in issue had never been raised, preserved or passed upon in any state court. In ordering a dismissal of the petition, Mr. Justice White, speaking for the Court, stated:

> It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions. In *Crowell v. Randell*, 10 Pet. 368, 9 L.Ed. 458 (1836), Justice Story reviewed the earlier cases commencing with *Owings v. Norwood's Lessee*, 5 Cranch 344, 3 L.Ed. 120 (1809), and came to the conclusion that the judiciary act of 1789, C. 20, § 25, 1 Stat. 85, vested this Court with no jurisdiction unless a federal question was raised and decided in the state court below. "If both of these do not appear on the record, the appellate jurisdiction fails." (Citation.) The Court has consistently refused to decide federal constitutional issues

raised here for the first time on review of state court decisions both before the *Crowell* opinion, *Miller for Use of United States v. Nicholls,* 4 Wheat. 311, 315, 4 L.Ed. 578 (1819), and since, *e.g. Safeway Stores, Inc. v. Oklahoma Retail Grocers Assn.* (citations).

In addition to the question of jurisdiction arising under the statute controlling our power to review final judgments of state courts, 28 U.S.C § 1257, there are sound reasons for this. Questions not raised below are those on which the record is very likely to be inadequate, since it certainly was not compiled with those questions in mind. And in a federal system, it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground. Even though States are not free to avoid constitutional issues on inadequate state grounds (citation), they should be given the first opportunity to consider them.

D. The Petition Fails to Comply With the Requirements of U.S. Sup.Ct. Rule 21.1(h), Depriving This Court of Jurisdiction to Review the State Court Judgment by Certiorari.

The Petition fails to comply with the requirements of U.S. Sup.Ct. Rule 21.1(h) in that it contains no statement specifying the stage in which the federal questions sought to be reviewed were raised in either the Los Angeles Superior Court or the California State Court of Appeal; the method or manner by which such

questions were raised, and the way in which the questions were passed upon by the state court. The Petition contains no quotation of specific portions of the record as will show that the federal questions were timely and properly raised so as to give this Court jurisdiction to review the state court judgment on writ of certiorari. The Petition is therefore fatally defective and should be dismissed on that ground alone.

E. The Petition Should Be Denied For Failure to Demonstrate That "There Are Special and Important Reasons" For Granting Certiorari.

The Petition is similarly deficient in even attempting to comply with U.S. Sup.Ct. Rule 17, which requires a showing that there be special and important reasons for granting certiorari. Rule 17.1(c) sets forth illustrations of such special and important reasons, such as that a state court "has decided an important question of federal law which has not been, but should be, settled by the Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

In commenting on the scope of this rule and the reluctance by the Court to grant certiorari, Mr. Justice Frankfurter in *Rice v. Sioux City Memorial Park Cementary,* 349 U.S. 70, 75 S. Ct. 614, 616, 99 L.Ed. 897 (1955), stated:

> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an *intellectually* interesting and solid problem. But this Court does not sit to satisfy a scholary interest in such issues. Nor does it sit for the benefit of the particular litigants. (Citations.) "Special and important reasons" imply a reach to a problem beyond the academic or the episodic.

> This is essentially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion. (Citation.)

The reason the Petitioner here has not attempted to set forth any special and important reasons for granting certiorari is obvious—there are none. The Petition should therefore be dismissed.

III

CONCLUSION

Of all of the frivolous petitions seeking certiorari that must come before this Court, the one filed by Petitioner here must be exemplary. It is respectfully submitted that it should be summarily dismissed.

Dated: August 14, 1987.

Respectfully submitted,

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APPENDIX

CHAPTER 1.5
DISMISSAL FOR DELAY IN PROSECUTION

Art. 1. Definitions and General Provisions. §§583.110-583.161.
Art. 2. Mandatory Time for Service of Summons. §§583.210-583.250.
Art. 3. Mandatory Time for Bringing Action to Trial or New Trial. §§583.310-583.360.
Art. 4. Discretionary Dismissal for Delay. §§583.410-83.430.

ARTICLE 1
Definitions and General Provisions

Definitions. §583.110.
Application to civil action. §583.130.
Diligence required in obtaining disposition. §583.130.
Abrogation. §583.140.
Authority of court to dismiss action. §583.150.
Motion for dismissal. §583.160.
No dismissal when child support order in force. §583.161.

§583.110. Definitions.

As used in this chapter, unless the provision or context otherwise requires:

(a) "Action" includes an action commenced by cross-complaint or other pleading that asserts a cause of action or claim for relief.

(b) "Complaint" includes a cross-complaint or other initial pleading.

(c) "Court" means the court in which the action is pending.

(d) "Defendant" includes a cross-defendant or other person against whom an action is commenced.

(e) "Plaintiff" includes a cross-complainant or other person by whom an action is commenced.

(f) "Service" includes return of summons. **Leg.H.** 1984 ch. 1705.

§583.120. Application to Civil Action.

(a) This chapter applies to a civil action and does not apply to a special proceeding except to the extent incorporated by reference in the special proceeding.

(b) Notwithstanding subdivision (a), the court may, by rule or otherwise under inherent authority of the court, apply this chapter to a special proceeding or part of a special proceeding except to the extent such application would be inconsistent with the character of the special proceeding or the statute governing the special proceeding. **Leg.H.** 1984 ch. 1705.

§583.130. Diligence Required in Obtaining Disposition.

It is the policy of the state that a plaintiff shall proceed with reasonable diligence in the prosecution of an action but that all parties shall cooperate in bringing the action to trial or other disposition. Except as otherwise provided by statute or by rule of court adopted pursuant to statute, the policy favoring the right of parties to make stipulations in their own interests and the policy favoring trial or other disposition of an action on the merits are generally to be preferred over the policy that requires dismissal for failure to proceed with reasonable diligence in the prosecution of an action in construing the provisions of this chapter. **Leg.H.** 1984 ch. 1705.

§583.140. Abrogation.

Nothing in this chapter abrogates or otherwise affects the principles of waiver and estoppel. **Leg.H.** 1984 ch. 1705.

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§583.150. Authority of Court to Dismiss Action.

This chapter does not limit or affect the authority of a court to dismiss an action or impose other sanctions under a rule adopted by the court pursuant to Section 575.1 or by the Judicial Council pursuant to statute or otherwise under inherent authority of the court. **Leg.H.** 1984 ch. 1705.

§583.160. Motion for Dismissal.

This chapter applies to a motion for dismissal made in an action commenced before, on, or after the effective date of this chapter, except that in the case of an action commenced before the effective date of this chapter:

(a) A motion for dismissal made pursuant to notice given before, on, or within one year after the effective date of this chapter is governed by the applicable law in effect immediately before the effective date and for this purpose the law in effect immediately before the effective date continues in effect.

(b) This chapter does not affect an order dismissing an action made before the effective date of this chapter. **Leg.H.** 1984 ch. 1705.

§583.161. No Dismissal When Child Support Order in Force.

No petition filed pursuant to Section 4503 of the Civil Code shall be dismissed pursuant to this chapter if an order for child support has been issued in connection with the proceeding and the order has not been revoked by the court or has not terminated pursuant to Sections 196, 196.5, and 4700 of the Civil Code. **Leg.H.** 1986 ch. 366.

ARTICLE 2
Mandatory Time for Service of Summons

Time limit for service upon defendant. §583.210.
Nonapplicability of time limit. §583.220.
Extension of time. §583.230.
Computation of time. §583.240.
Failure to obtain action within time limit. §583.250.

§583.210. Time Limit for Service Upon Defendant.

(a) The summons and complaint shall be served upon a defendant within three years after the action is commenced against the defendant. For the purpose of this subdivision an action is commenced at the time the complaint is filed.

(b) Return of summons or other proof of service shall be made within 60 days after the time the summons and complaint must be served upon a defendant. **Leg.H.** 1984 ch. 1705.

§583.220. Nonapplicability of Time Limit.

The time within which service must be made pursuant to this article does not apply if the defendant enters into a stipulation in writing or does another act that constitutes a general appearance in the action. For the purpose of this section none of the following constitutes a general appearance in the action:

(a) A stipulation pursuant to Section 583.230 extending the time within which service must be made.

(b) A motion to dismiss made pursuant to this chapter, whether joined with a motion to quash service or a motion to set aside a default judgment, or otherwise.

(c) An extension of time to plead after a motion to dismiss made pursuant to this chapter. **Leg.H.** 1984 ch. 1705.

§583.230. Extension of Time.

The parties may extend the time within which service must be made pursuant to this article by the following means:

(a) By written stipulation. The stipulation need not be filed but, if it is not filed, the stipulation shall be brought to the attention of the court if relevant to a motion for dismissal.

(b) By oral greement [sic] made in open court, if entered in the minutes of the court or a transcript is made. **Leg.H.** 1984 ch. 1705.

§583.240. Computation of Time.

In computing the time within which service must be made pursuant to this article, there shall be excluded the time during which any of the following conditions existed:

(a) The defendant was not amenable to the process of the court.

(b) The prosecution of the action or proceedings in the action was stayed and the stay affected service.

(c) The validity of service was the subject of litigation by the parties.

(d) Service, for any other reason, was impossible, impracticable, or futile due to causes beyond the plaintiff's control. Failure to discover relevant facts or evidence is not a cause beyond the plaintiff's control for the purpose of this subdivision. **Leg.H.** 1984 ch. 1705.

§583.250. Failure to Obtain Action Within Time Limit.

(a) If service is not made in an action within the time prescribed in this article:

(1) The action shall not be further prosecuted and no further proceedings shall be held in the action.

(2) The action shall be dismissed by the court on its own motion or on motion of any person interested in the action, whether named as a party or not, after notice to the parties.

(b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute. **Leg.H.** 1984 ch. 1705.

ARTICLE 3

Mandatory Time for Bringing Action to Trial or New Trial

Time limit for bringing action to trial. §583.310.
Time limit for new trial. §583.320.
Extension of time. §583.340.
Period of tolling or extension. §583.350.
Dismissal of action. §583.360.

§583.310. Time Limit for Bringing Action to Trial.

An action shall be brought to trial within five years after the action is commenced against the defendant. **Leg.H.** 1984 ch. 1705.

§583.320. Time Limit for New Trial.

(a) If a new trial is granted in the action the action shall again be brought to trial within the following times:

(1) If a trial is commenced but no judgment is entered because of a mistrial or because a jury is unable to reach a decision, within three years after the order of the court declaring the mistrial or the disagreement of the jury is entered.

(2) If after judgment a new trial is granted and not [sic] appeal is taken, within three years after the order granting the new trial is entered.

(3) If on appeal an order granting a new trial is affirmed or ajudgment [sic] is reversed and the action

remanded for a new trial, within three years after the remittitur is filed by the clerk of the trial court.

(b) Nothing in this section requires that an action again be brought to trial before expiration of the time prescribed in Section 583.310. **Leg.H.** 1984 ch. 1705.

§583.330. Extension of Time.

The parties may extend the time within which an action must be brought to trial pursuant to this article by the following means:

(a) By written stipulation. The stipulation need not be filed but, if it is not filed, the stipulation shall be brought to the attention of the court if relevant to a motion for dismissal.

(b) By oral agreement made in open court, if entered in the minutes of the court or a transcript is made. **Leg.H.** 1984 ch. 1705.

§583.340. Computation of Time.

In computing the time within which an action must be brought to trial pursuant to this article, there shall be excluded the time during which any of the following conditions existed:

(a) The jurisdiction of the court to try the action is suspended.

(b) Prosecution or trial of the action was stayed or enjoined.

(c) Bringing the action to trial, for any other reason, was impossible, impracticable, or futile. **Leg.H.** 1984 ch. 1705.

§583.350. Period of Tolling or Extension.

If the time within which an action must be brought to trial pursuant to this article is tolled or otherwise extended pursuant to statute with the result that at the

end of the period of tolling or extension less than six months remains within which the action must be brought to trial, the action shall not be dismissed pursuant to this article if the action is brought to trial within six months after the end of the period of tolling or extension. **Leg.H.** 1984 ch. 1705.

§583.360. Dismissal of Action.

(a) An action shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties, if the action is not brought to trial within the time prescribed in this article.

(b) The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute. **Leg.H.** 1984 ch. 1705.

ARTICLE 4
Discretionary Dismissal for Delay

Court's discretion in dismissal defined. §583.410.
Conditions for dismissal. §583.420.
Parties' compliance with court's terms. §583.430.

§583.410. Court's Discretion in Dismissal Defined.

(a) The court may in its discretion dismiss an action for delay in prosecution pursuant to this article on its own motion or on motion of the defendant if to do so appears to the court appropriate under the circumstances of the case.

(b) Dismissal shall be pursuant to the procedure and in accordance with the criteria prescribed by rules adopted by the Judicial Council. **Leg.H.** 1984 ch. 1705.

§583.420. Conditions for Dismissal.

(a) The court may not dismiss an action pursuant to this article for delay in prosecution except after one

of the following conditions has occurred:

(1) Service is not made within two years after the action is commenced against the defendant.

(2) The action is not brought to trial within the following times:

(A) Three years after the action is commenced against the defendant unless otherwise prescribed by rule under subparagraph (B).

(B) Two years after the action is commenced against the defendant if the Judicial Council by rule adopted pursuant to Section 583.410 so prescribes for the court because of the condition of the court calendar or for other reasons affecting the conduct of litigation or the administration of justice.

(3) A new trial is granted and the action is not again brought to trial within the following times:

(A) If a trial is commenced but no judgment is entered because of a mistrial or because a jury is unable to reach a decision, within two years after the order of the court declaring the mistrial or the disagreement of the jury is entered.

(B) If after judgment a new trial is granted and no appeal is taken, within two years after the order granting the new trial is entered.

(C) If on appeal an order tranting a new trial is affirmed or a judgment is reversed and the action remanded for a new trial, within two years after the remittitur is filed by the clerk of the trial court.

(b) The times provided in subdivision (a) shall be computed in the manner provided for computation of the comparable times under Articles 2 (commencing with Section 583.210) and 3 (commencing with Section 583.310). **Leg.H.** 1984 ch. 1705.

§583.430. Parties' Compliance With Court's Terms.

(a) In a proceeding for dismissal of an action pursuant to this article for delay in prosecution the court in its discretion may require as a condition of granting or denial of dismissal that the parties comply with such terms as appear to the court proper to effectuate substantial justice.

(b) The court may make any other order necessary to effectuate the authority provided in this section, including, but not limited to, provisional and conditional orders. **Leg.H.** 1984 ch. 1705.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11333 Iowa Avenue, Los Angeles, California 90025; that on August 14, 1987, I served the within *Brief in Opposition to Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.W.
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I declare under penalty of perjury that the foregoing is true and correct. Executed on August 14, 1987, at Los Angeles, California.

Siri Ved K. Khalsa
(Original signed)